IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17031 of 2005
With
SPECIAL CIVIL APPLICATION No. 17032 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAIPRAKASH DEVKINANDAN CHIRIPAL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1 - 2.
MR MR MENGDEY, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3, 3.2.3, 3.3.4, 3.3.5, 3.3.6,3.3.7 - 4, 4.3.3, 6,8 - 9.
None for Respondent(s) : 3, 3.2.2,3.2.4 - 4,4.2.3 - 5,5.2.1
MR HRIDAY BUCH for Respondent(s) : 3.3.1, 3.3.2,3.3.3
DELETED for Respondent(s) : 4.2.2, 7,
MR CC BHALJA for Respondent(s) : 4.3.1, 4.3.2,4.3.4
- for Respondent(s) : 5.3.1, 5.3.2, 5.3.3, 5.3.4, 5.3.5,5.3.6

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/03/2006

CAV ORDER

By way of these petitions, the respective petitioners have

challenged the legality and validity of that part of the impugned judgment and order passed by the Gujarat Revenue Tribunal (for short "the Tribunal) dated 31st January, 2005 passed in Revision Application No.TEN. B.A. 367 of 1996, whereby the Tribunal has rejected the application of the petitioners for being impleaded as party opponents to the said Revision Application, which was pending before the Tribunal and thereby directing that the petitioners cannot be permitted to participate in the proceedings before the Mamlatdar after the remand and consequently granting the said application of the petitioners for being impleaded as party opponents to said Revision Application and permitting the petitioners to represent their case before the Mamlatdar and ALT after remand.

2. As in both the Special Civil Applications, common judgment and order passed by the Tribunal is challenged, they are being disposed of by this common judgment and order. Few facts and chronological events leading to impugned judgment and order passed by the Tribunal are required to be considered, which are as under:

3. The dispute is with regard to land bearing survey No.698 situated at village Makarba, Tal: City, Dist: Ahmedabad. Name of one Bapuji Amthaji (predecessor of Kaluji Bapuji) came to be entered into revenue record as a tenant in respect of land bearing survey

No.698 (hereinafter referred to as “the land in question”) vide entry No.2791. It appears that name of one Manabhai Ghelabhai came to be deleted as a tenant vide entry No.3300 dated 10-4-53. It appears from the record that the name of one another alleged tenant i.e. Bapuji Amthaji came to be deleted vide entry No.4138 dated 16-10-1960, the land in question was shown as Government Padtar Land. It appears from the record that the proceedings under Section 32P(2)(c) came to be initiated and the land in question was ordered to be sold to Kalaji Bapuji for the price/premium fixed at Rs.1424/- as per the order of the Mamlatdar and ALT dated 18th October, 1988 bearing case No.21 of 1988 and necessary consequential revenue entry No.6534 was also mutated vide entry dated 29th October, 1988. It appears from the record that the aforesaid order passed by the Mamlatdar and ALT dated 18th October, 1988 came to be challenged by Manabhai Ghelabhai before the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat, who by its judgment and order dated 4th January, 1993/25th January, 1993 allowed the said appeal and the order in favour of Kalaji came to be set aside and directed that the rights of the applicants would be determined under the provisions of Bombay Land Revenue Code or by appropriate forum. It also further appears from the record that the heirs of Manabhai Ghelabhai initiated proceedings before the Mamlatdar and ALT, City Taluka under Sections 32-O and 70-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short “the

Act") being Ganot Case No.6/1994 without joining heirs of Kalaji Bapuji as party to the said proceedings and joining only one Sherubhai Mohammadbhai, the land owner as opponent and the Mamlatdar and ALT, City Taluka by its judgment and order dated 30th April, 1994 declared heirs of Manabhai as tenants of the land in question. It also further appears from the record that thereafter immediately legal heirs of Manabhai executed agreement to sell of the land in question in favour of one Saraswati Society and it appears that the possession was alleged to have been handed over to the said society on 10-8-1994. That thereafter, the certificate as required under Section 32-M of the Act came to be issued in favour of heirs of Manabhai. Having come to know about the judgment and order passed by the Mamlatdar and ALT dated 30-4-1994 passed in Ganot Case No.6/1994, appeals came to be filed by Kalaji and others somewhere in May, 1995 and in between the legal heirs of Manabhai executed six different sale deeds in favour of Kiritbhai and Sanjeevbhai. While the aforesaid land came to be sold in favour of Kiritbhai and Sanjeevbhai even vide entry dated 24-5-1995, the name of/sale deed in favour of Saraswati society by legal heirs of Manabhai in respect of very land, came to be entered into. It appears from the record that aforesaid Kiritbhai and Sanjeevbhai submitted an application to be joined as party respondents in appeal of Kalaji and others which was against the order of selling the land to Manabhai. It appears from the record that thereafter the appeal

came to be heard, which was filed by heirs of Kalaji against the order passed by the Mamlatdar and ALT dated 30-4-1994 and the Deputy Collector (Land Reforms) Appeals, Ahmedabad by its common judgment and order dated 23rd February, 1996 allowed the Tenancy Appeal No.66 of 1995 and Tenancy Appeal No.40 of 1995 by quashing and setting aside the order passed by the Mamlatdar and ALT dated 30th April, 1994 passed in Ganot Case No.6/1994 and remanded the matter to the Mamlatdar and ALT for fresh decision.

4. Being aggrieved and dissatisfied with the common judgment and order passed by the Deputy Collector (Land Reforms) Appeals, Ahmedabad dated 23-2-1996 passed in Tenancy Appeal Nos.66 of 1995 and 40 of 1995 in quashing and setting aside the order passed by the Mamlatdar and ALT dated 30th April, 1994 passed in Ganot Case No.6 of 1994 and in remanding the same, legal heirs of Manaji preferred Revision Application No.367 of 1996 before the Tribunal. Simultaneously, Saraswati society and heirs of Manaji also preferred Revision Application No.576 of 1996 before the Tribunal and in both the Revision Applications, the Tribunal granted order of status quo and the said order of status quo continued till 20th February, 2004 i.e. till the Revision Application No.576 of 1996 was withdrawn. It also further appears that heirs of Kalaji Bapuji Thakore preferred Special Civil Application No.1841 of 1997 before this Court contending inter alia that concerned land was a Government land

and being Government land, it was subsequently allotted to the heirs of Kalaji Bapuji in consequence of a public notification and his application in pursuance thereto and therefore, according to the petitioner, provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short “the Act”) were not applicable and therefore, the Tribunal had no jurisdiction to decide the said application. However, this Court disposed of the said Special Civil Application by order dated 4th August, 1997 by observing that as the Tribunal is seized of the matter and it is open for the petitioner (heirs of Kalaji Bapuji) to submit before the Tribunal that the concerned land is Government land and if the Tribunal so holds that it is a Government land, then submissions based thereon would be available to the petitioner.

It also further appears that in the meantime, proceedings were initiated by the Mamlatdar and ALT, City Taluka, Ahmedabad under Section 84C of the Act for breach of Section 63 of the Act by exercising *suo motu* powers alleging inter alia that by sale of the land in question to Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel and the Mamlatdar and ALT, City Taluka, Ahmedabad by its order dated 10-11-1997 held that sale in favour of Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel by the heirs of Manabhai and transfer in favour of the aforesaid two persons is in breach of Section 63 of the Act and accordingly declared the said sale as invalid and confirmed the sale in favour of the Saraswati Society and

accordingly dropped the proceedings under Section 84C of the Act. It appears that in spite of the aforesaid order passed by the Mamlatdar and ALT, City Taluka, Ahmedabad dated 10-11-1997 declaring the sale in favour of Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel as invalid, and in breach of Section 63 of the Act, entry in favour of the aforesaid two persons i.e. Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel came to be certified in the revenue records. It appears that being aggrieved by the said order passed by the Mamlatdar and ALT in declaring the sale in favour of Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel as invalid, the aforesaid two persons preferred appeal before the Deputy Collector, (Land Reforms), Appeal, Ahmedabad under Section 74 of the Act being Tenancy Appeal No.263 of 1997 and the Deputy Collector by its order dated 25-7-2000 set aside the order passed by the Mamlatdar and ALT dated 10-11-1997 and remanded the matter to the Mamlatdar and ALT. In spite of the order of remand and without waiting for the decision, whether there will be a breach of Section 63 of the Act or not, the aforesaid Kirit Dwarkadas Patel, Sanjeev Kiritkumar Patel and Saraswati society executed sale deed in favour of the petitioners by sale deed dated 20th August, 2002. It also further appears that on remand by order passed by the Deputy Collector dated 25-7-2000 passed in Tenancy Appeal No.263 of 1997, the Mamlatdar and ALT initiated further proceedings and by order dated 20th March, 2003 held that transfer in favour of Kirit

Dwarkadas Patel and Sanjeev Kiritkumar Patel is not in breach of Section 2(6) of the Act and withdrew the notice under Section 84C of the Act and confirmed the sale in favour of aforesaid two persons. It further appears that necessary entry was made in the revenue record mutated in the name of the present petitioners on 2-4-2003 on the basis of the sale deed dated 20th August, 2002 by Kirit Dwarkadas Patel, Sanjeev Kiritkumar Patel and Saraswati society. It appears that thereafter the Revision Application filed by the Saraswati society and others being Revision Application No.TEN.BA. 576 of 1996, came to be withdrawn on 20-2-2004. However, the Revision Application filed by the heirs of Manabhai against the judgment and order passed by the Deputy Collector dated 23-2-1996 was kept pending. The petitioners submitted an application for joining them as party respondents before the Tribunal being Revision Application No.367 of 1996 contending inter alia that by sale deeds dated 20-8-2002 and 27-9-2002, they have purchased the land in question from Kirit Dwarkadas Patel, Sanjeev Kiritkumar Patel and Saraswati society and as the heirs of Manabhai are trying to withdraw the said Revision Application, it was requested to permit them to be joined as party respondents. That the aforesaid Revision Application No.367 of 1996 came up for hearing before the Tribunal and simultaneously the application submitted by the petitioners for permitting them to be joined as party respondents also came to be heard and as the revisionist of Revision Application No.367 of 1996,

heirs of deceased Manabhai submitted an application for allowing them to withdraw the said Revision Application, Tribunal by impugned order dated 31-1-2005 dismissed the aforesaid Revision Application as withdrawn and simultaneously dismissed the application submitted by the petitioners to allow them to be joined as party respondents and allow to take part in the proceedings before the Mamlatdar and ALT after the remand. Being aggrieved by the same, the petitioners have preferred the present Special Civil Applications for the aforesaid reliefs. It is required to be noted that in the meantime, heirs of Manabhai also preferred Revision Application No.30 of 2004 before the Deputy Collector (Land Reforms) Appeal, Ahmedabad challenging the order passed by the Mamlatdar and ALT dated 20-3-2003 passed in Tenancy Case No.439 of 2001 by which in a proceedings under Section 84C of the Act, the Mamlatdar and ALT held that by sale/transfer in favour of Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel, there was no breach of Section 2(6) and/or Section 63 of the Act and by which the notice under Section 84C of the Act was withdrawn and the sale in favour of the aforesaid two persons was confirmed and the Deputy Collector by its order dated 22-3-2005 allowed the said Revision Application by quashing and setting aside the order passed by the Mamlatdar and ALT, Daskroi dated 20-3-2003 and remanded the matter to the Mamlatdar and ALT, Daskroi to hold an inquiry afresh under Section 84C of the Act considering the observation made in

the order of remand dated 25-7-2000 and after the final order by the Mamlatdar and ALT on the basis of the order of remand dated 31-1-2005 and considering the final decision with regard to tenancy. It appears that on withdrawal of Revision Application No.367 of 1996, the proceedings before the Mamlatdar and ALT pursuant to the order passed by the Deputy Collector (Land Reforms) Appeal, Ahmedabad dated 23-2-1996 passed in Tenancy Appeal No.66 of 1995 and Tenancy Appeal No.40 of 1995, are initiated which was numbered as Tenancy Case No.31 of 2005 and an application was given by the petitioners to allow them to be joined as party respondents in the said proceedings and the Mamlatdar and ALT, considering the observation and the order passed by the Tribunal in its order dated 31-1-2005 passed in Revision Application No.367 of 1996, more particularly in para 6.2, dismissed the application submitted by the petitioners and in the meantime, the present Special Civil Applications came to be filed for the aforesaid reliefs. What is challenge in the present Special Civil Applications is the order passed by the Tribunal dated 31-1-2005 passed in Revision Application No.367 of 1996 in dismissing the application submitted by the petitioners for permitting them to be joined as party respondents in the said revision application and to allow them to take part in the proceedings before the Mamlatdar and ALT after the remand.

5. Shri AJ Patel, learned advocate appearing on behalf of the respective petitioners has submitted that the Tribunal has committed an error in rejecting the application of the petitioners for being impleaded as party-opponents to the said Revision Application as the petitioners have purchased the land in question and they are the bona fide purchasers and that they are vitally interested. It is also further submitted that the Tribunal has further committed an error in depriving the petitioners of their legitimate rights of representing their case not only before the Tribunal but also before the Mamlatdar on remand of the matter to him and depriving the petitioners of their property for all time to come. He has also further submitted that the Tribunal has committed an error in not properly appreciating that while permitting the withdrawal of the Revision Application pending before it, it was not necessary to decide the application filed by the petitioners for being impleaded as party to the said proceedings and the question of impleading them as party to the proceedings ought to have been kept open and it ought to have been left to the descretion of the Mamlatdar and ALT to whom the proceedings were remanded by the Deputy Collector. It is also further submitted that the petitioners are not only necessary but proper party to the proceedings as they purchased the land involved in the proceedings from the erstwhile owner of the land. It is also further submitted that the petitioners have purchased the land in question by registered sale deeds and their names also appear in

the revenue record during the pendency of the said Revision Application and they are bona fide purchasers of the land in question after obtaining the title clearance certificate. It is also further submitted that the petitioners had purchased the land in question after having found that title to the said land was clear and marketable on the basis of the inspection of the revenue record.

6. Shri Patel has relied upon the following judgments in support of his above submission.

1. Dhurandhar Prasad Singh V. Jai Prakash University and others reported in 2001 AIR SCW 2674
2. Nagubai Ammal and others V. B. Sharma Rao and others reported in AIR 1956 SCW 593
3. Lilidhar Uttamchand V. Shiwaji Ganesh Patwardhan and others reported in AIR 1936 Nagpur 125
4. Alluri Venkata Narasimha Raju and another V. Katteboyina Yellamanda and others reported in AIR 1960 Andhra Pradesh 32
5. Kusuma Dei and others V. Malati Bewa and others reported in AIR 1969 Orissa 195

7. Petition is opposed by all the respondents. An affidavit-in-reply is filed on behalf of respondent No.4(3) (i to iv) and respondent No.5 i.e. original land owners and heirs of Kalaji. Shri Mihir Joshi, learned

senior advocate appeared with Shri Vimal Patel, learned advocate on behalf of respondent No.5. It is submitted by Shri Joshi that petitioners are not the bona fide purchasers as alleged and contended by them. It is also further submitted by him that as such the alleged sale in favour of the petitioners is in breach of the order of status quo granted by the Tribunal. It is also further submitted that in fact the petitioners were well aware of the pending tenancy proceedings and were also aware that the vendors could not have executed the sale deed in their favour and have deliberately filed an application for joining as party to the Revision Application to confuse the issues and delay adjudication. It is also further submitted that the action of the petitioner is not bona fide and they are neither necessary nor proper party to the pending proceedings which essentially relate to the adjudication of competing rights of respondent Nos.3 and 5 to the land in question. It is submitted that the petitioners are relying upon the title clearance certificate to show that they are bona fide purchasers and they have purchased the land in question after obtaining title clearance certificate, however, the title clearance certificate is dated 13-6-2003 and the sale deed in favour of the petitioners are dated 20-8-2002 and 27-9-2002 i.e. before the title clearance certificate. Thus, it clearly establishes beyond doubt that the petitioners are not bona fide purchasers and they purchased the property with the knowledge of the proceedings and despite the order of status quo granted by the

Tribunal. It is also further submitted that even the reliance placed upon the public notice is also misplaced as the public notice dated 27-6-2002 was issued on behalf of the Saraswati society and not on behalf of the petitioners, though, the certificate was issued to the petitioner. It is also further submitted by him that even in the title clearance certificate itself, though it is mentioned that some objections were received, the objections are brushed aside on the ground that the details of tenancy proceedings were not forthcoming and at that time, the society at whose instance public notice was issued, was itself the applicant of Revision Application No.576 of 1996 and has aware of the proceedings. It is also further submitted that even Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel had no valid title as the proceedings against them on the basis of the sale/transfer in their favour for breach of Section 63 of the Act was pending and the proceedings under Section 84C of the Act were also pending and now even the Deputy Collector (Land Reforms) Appeal, Ahmedabad vide its order dated 22-3-2005 has set aside the order passed by the Mamlatdar and ALT dated 20-3-2003 passed in Tenancy Case No.439 of 2001 by which the Mamlatdar and ALT held the transaction/sale in favour of aforesaid two persons as valid and legal and therefore, it is requested to dismiss the present Special Civil Applications with exemplary cost. More particularly by submitting that pursuant to the order passed by the Deputy Collector dated 23-2-1996 on withdrawal of Revision Application

No.367 of 1996, further proceedings by the Mamlatdar and ALT are already initiated vide remand tenancy case No.31 of 2005, therefore, as such so far as the prayer of the petitioners to permit them to be joined as party respondents in Revision Application No.367 of 1996 has become infructuous and/or will not survive.

8. Heard the learned advocates appearing on behalf of the parties.

9. One Sherubhai Mohammadbhai was the owner of the land in question and two persons and/or their respective heirs i.e. Kalaji Bapuji and Mana Ghela both claimed tenancy rights with regard to the land in question. Initially, the proceedings under Section 32P(2)(c) came to be initiated at the instance of Kalaji Bapuji Thakore claiming for declaring them as tenants and for fixing the purchase price and an order came to be passed by the Mamlatdar and ALT dated 18th October, 1988 in Case No.21 of 1988. That the said order came to be challenged by Mana Ghela before the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, who by order dated 25-1-1993 allowed the said appeal and order in favour of Kalaji Bapuji came to set aside with an observation that the rights of the applicants i.e. heirs of Manabhai i.e. Shivabhai Manabhai and others can be decided and/or established under the Bombay Land Revenue Code and/or before the appropriate forum. The heirs of

Mana Ghela submitted an application before the Mamlatdar and ALT under Section 70-B and 32 (O) of the Act for declaring them as tenants which was numbered as Tenancy Case No.6 of 1994 and the Mamlatdar and ALT by its order dated 30th April, 1994 declared the heirs of Mana Ghela as tenants and purchase price was fixed and on payment of the same, the certificate under Section 32(M) of the Act in favour of heirs of Mana Ghela, was also issued. The heirs of Kalaji were also claiming tenancy rights with regard to the very land in question, however, they were not joined as party to the said proceedings before the Mamlatdar and ALT in Tenancy Case No.6 of 1994 as well as the original land owner Sherubhai Mohammadbhai died and their heirs were also not heard and therefore, the heirs of the original land owner Sherubhai Mohammadbhai as well as heirs of Kalaji Thakore preferred Tenancy Appeal Nos.66 of 1995 and 40 of 1995 respectively and the Deputy Collector (Land Reforms) Appeals, Ahmedabad by its judgment and order dated 23-2-1996 allowed the Tenancy Appeal Nos.66 of 1995 and 40 of 1995 quashing and setting aside the order passed by the Mamlatdar and ALT, City Taluka dated 30th April, 1994 passed in Tenancy Case No.6 of 1994 and remanded the matter to the Mamlatdar and ALT for deciding the dispute with regard to the tenancy afresh in light of the observations made in the said order. It appears that during the pendency of the proceedings before the Deputy Collector (Land Reforms) Appeals, Ahmedabad on the basis of the order passed by the Mamlatdar and

ALT, City Taluka dated 30th April, 1994 by which the heirs of Mana Ghela were declared as tenants, the heirs of Mana Ghela sold the land in question in favour of one Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel by six different sale deeds dated 16-5-1995. However, the relevant entry with regard to the said sale deeds in favour of Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel were mutated in the record of rights in 1998 only. It also emerges from the record that simultaneously the heirs of Mana Ghela also sold the very land in question to one Saraswati society by registered sale deed dated 26-7-1995. It is required to be noted that the petitioners claim to have purchased the aforesaid land by registered sale deed from Kirit Dwarkadas Patel, Sanjeev Kiritkumar Patel and Saraswati society by two registered sale deeds dated 20th August, 2002 and 27th September, 2002 and the necessary entry was mutated on 2-4-2003 with regard to the said transaction. As stated above, the Deputy Collector (Land Reforms) Appeals, Ahmedabad by its order dated 23-2-1996 had already set aside the order passed by the Mamlatdar and ALT dated 30-4-1994 by which the heirs of Mana Ghela were declared as tenants and the entire dispute with regard to tenancy either in favour of heirs of Kalaji Bapuji or heirs of Mana Ghela was at large. It also emerges from the record that the order passed by the Deputy Collector, (Land Reforms) Appeals, Ahmedabad dated 23-2-1996 quashing and setting aside the order passed by the Mamlatdar and ALT, City Taluka dated 30th April, 1994

came to be challenged by the Saraswati society and heirs of Mana Ghela by way of Revision Application No. TEN.BA. 576 of 1996 and by heirs of Mana Ghela by way of Revision Application No.TEN.BA. 367 of 1996. The Tribunal granted the order of status quo in a revision application filed by the Saraswati society and others on 28-11-2001, which was continued till 20th February, 2004 till the Revision Application No.576 o 1996 came to be withdrawn. It is also required to be noted at this stage that in the Revision Application No.576 of 1996, it was the contention on behalf of the Saraswati society that as in the meantime, Saraswati society has already purchased the land in question, third party rights are already created and therefore, the order passed by the Deputy Collector (Land Reforms) Appeals, Ahmedabad quashing and setting aside the order passed by the Mamlatdar and ALT dated 30-4-1994 is required to be quashed and set aside. Thus, when the order of status quo was in operation on and after 28-11-2001, the land in question could not have been sold by Saraswati society and/or Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel to the petitioners and the petitioners also ought not to have purchased the said land and therefore, the sale in favour of the petitioners is in breach of the order of status quo. Apart from that, said Kirit Dwarkadas Patel and Sanjeev Kiritkumar Patel and even the Saraswati society from whom the petitioners have purchased the property, have purchased the property from heirs of Mana Ghela and so far as Mana Ghela is

concerned, even the order in their favour declaring them as tenants came to be set aside and the matter was remanded to the Mamlatdar and ALT for deciding the same afresh. So far as the Saraswati society is concerned, from whom the petitioners have purchased the land in question, have withdrawn Revision Application No.576 of 1996, meaning thereby, they accepted the order of remand passed by the Deputy Collector (Land Reforms) Appeals, Ahmedabad. Therefore, even the status of heirs of Mana Ghela and/or heirs of Kalaji Bapuji was also not established and/or their status as tenants of the land in question is/was yet to be decided.

9. It also emerges from the record and as stated above, even the transfer in favour of Kiritbhai and Sanjeevbhai is also held to be invalid and the proceedings under Section 84C are remanded to the Mamlatdar and ALT for breach of Sections 2(6) and Section 63 of the Act. Therefore, the status of the person from whom the petitioners have purchased the land itself is under cloud and/or transaction in their favour itself is under scrutiny/consideration. It appears that it is the contention on behalf of the petitioners that they are the bona fide purchasers and they have purchased the land in question after obtaining the title clearance certificate. It is required to be noted that the title clearance certificate was not obtained by the petitioner but it was obtained by the Saraswati society and even the objections were also invited by giving public advertisement in the local news

paper by the said society. It is also required to be noted that very Saraswati society was aware of the tenancy proceedings and the dispute between the original land owners, heirs of Mana Ghela and heirs of Kalaji Bapuji, as the very society had challenged the order passed by the Deputy Collector (Land Reforms) Appeals, Ahmedabad dated 23-2-1996 by way of revision application before the Tribunal being Revision Application No. TEN.BA. 576 of 1996 and obtained the order of status quo. Now the title clearance certificate was issued on the basis of the objections invited by the Saraswati society. Even in the title clearance certificate, there is a reference to some tenancy proceedings pending and still the petitioners purchased the land in question. Now considering the aforesaid facts and circumstances, it appears that the petitioners have purchased the land in question with open eyes and knowing full well that tenancy proceedings are pending with respect to the land in question. Under the circumstances, the only remedy available to the petitioners is to approach the civil Court against the heirs of Mana Ghela and/or against Kiritbhai and Sanjeevbhai and/or the Saraswati society. It is also required to be noted at this stage that the title clearance certificate relying upon which petitioners have alleged to have purchased the lands in question is dated 13-6-2003 and the petitioners have in fact purchased the lands in question much prior thereto i.e. on 20-8-2002 and 27-9-2002. Therefore, the contention on behalf of the petitioners that they are bona fide purchasers and

have purchased the lands in question after getting title clearance certificate cannot be accepted. So far as the dispute with regard to the tenancy is concerned, it is between the original land owner and the alleged tenants. As rightly held by the Tribunal that subsequent purchasers, who have alleged to have purchased the land in question from the persons i.e. the alleged tenants have no locus. As stated above, the petitioners have alleged to have purchased the land in question from Kiritbhai, Sanjeevbhai and the Saraswati society and the aforesaid persons of the society claimed that they have purchased the land in question from the heirs of Mana Ghela. Now so far as the heirs of Mana Ghela is concerned, their title/status itself is not clear. They are yet not declared to be the tenants of the land in question. Even, if in future, they are declared as tenants, then also question may pause whether if a person, who is declared a tenant under the provisions of the Act can sell the land and/or the same is a restricted land. It is required to be noted that the heirs of Kalaji Bapuji are also claiming tenancy rights. Now the dispute before the tenancy Court would be whether against the original land owners, heirs of Mana Ghela and Kalaji Bapuji are required to be declared as tenants or not under Section 32(O) of the Act in an application under Section 70(B) of the Act. In view of the aforesaid facts and circumstances, as stated above, the only right that can be in favour of the petitioners is to approach the civil Court against the persons from whom they have purchased land. So far as the tenancy

proceedings are concerned, in the aforesaid facts and circumstances, they do not have any locus and their application is rightly rejected.

10. It is required to be noted that so far as the application submitted by the petitioners for joining them as party respondents in Revision Application No.TEN.BA. 367 of 1996 is concerned, the same has become infructuous as the Revision Application No. 367 of 1996 is already disposed of as withdrawn and on withdrawal of said revision application, the order passed by the Deputy Collector (Land Reforms) Appeals, Ahmedabad dated 23-2-1996 passed in Tenancy Case Nos.66 of 1995 and 40 of 1995 are restored, meaning thereby the proceedings before the Mamlatdar and ALT, City Taluka for deciding the dispute with regard to the tenancy between the heirs of Mana Ghela, heirs of Kalaji Bapuji against the original land owner, will have to be proceeded further and only on declaring the heirs of Mana Ghela as tenants, the further rights if any in favour of the petitioners are required to be considered that too subject to the proceedings against Kiritbhai and Sanjeevbhai under Section 84C of the Act for breach of Sections 2(6) and 63 of the Act, as per the order passed by the Deputy Collector (Land Reforms) Appeals, Ahmedabad dated 22-3-2005 passed in Tenancy Case No.30 of 2004 by which the Deputy Collector has set aside the order passed by the Mamlatdar and ALT, Daskroi dated 20-3-2003 passed in Tenancy

Case No.439 of 2001 withdrawing the notice under Section 84C of the Act and holding that there is no breach of Section 2(6) of the Act. Under the circumstances, as stated above, the petitioners have no locus to participate in the tenancy proceedings between the alleged tenants and the original land owner under Section 32O and in a proceedings under Section 70-B of the Act, more particularly, when the petitioners and their predecessors in title claim to have purchased the land from the persons who are yet to be declared as tenants.

11. Now in light of the above findings and the facts and circumstances and the status and title in favour of the petitioners, the judgments cited at the Bar on behalf of the petitioners are required to be considered. It is required to be noted that in none of the cases, the dispute was with regard to the tenancy under the provisions of the Act and/or the purchaser claims any right through a person, who is yet to be declared as tenants under the provisions of the Act. Under the circumstances, the judgments cited at the Bar are not applicable to the facts of the present case and all the decisions narrated hereinabove on the facts and circumstances, are distinguishable.

12. For the reasons stated above, both the petitions fail and are required to be dismissed and are accordingly dismissed. Notice is

discharge. However, there will be no order as to costs.

(M.R.SHAH,J.)

shekhar/-